

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Cr. No. 23-mj-352 (DTS)

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
)
vs.)
)
)
SIDNEY ROYEL SELBY, III,)
)
)
Defendant.)

**DEFENDANT'S POSITION
REGARDING SENTENCING**

INTRODUCTION

On September 8, 2023, Mr. Selby will enter a guilty plea to the misdemeanor offense of indecently exposing his genitals in a public place (an aircraft).¹ The parties will jointly recommend that he receive a sentence of two years of probation, no further jail time to serve, 120 hours of community service (due within the first year of probation), a \$5,000 fine, and a statement of apology to the flight attendants. Mr. Selby waives his right to have a pre-sentence investigation report (PSR), and he asks to proceed to sentencing on September 8, 2023 immediately following his guilty plea. Mr. Selby plans to fly back to his home in California after the plea of guilty.

For the reasons set forth below, Mr. Selby, by and through his attorney, Ryan Garry, asks this Court to adopt the recommendations of the parties, impose no further executed jail time, not impose any travel restriction during probation due to his extensive

¹ The offense conduct is not addressed because Mr. Selby has not yet pled guilty. Mr. Selby has agreed to the language contained in the unsigned plea agreement sent to the Court on September 1, 2023.

travels as a professional musician, and impose drug testing on probable cause rather than random testing.

PENALTIES

This offense carries no mandatory minimum sentence and a maximum of 90 days in jail. D.C. STAT. § 22-1312. Thus, this offense is a Class B Misdemeanor. 18 U.S.C. § 3559(a)(7). Because the parties agree to recommend no further jail time, this offense may be considered a “petty offense,” and a pre-sentence investigation report is not needed. FED. R. CRIM. P. 32(c)(1)(A)(ii), 58(c).

BACKGROUND

It should be said at the outset that Mr. Selby is remorseful and will accept responsibility for his actions on Delta Flight 120. He does not dispute that what happened on Flight 120 caused negative effects on the flight attendants who witnessed his actions, and for that he is remorseful. But there is no doubt that given his lack of criminal history or any indication that such prior behavior has occurred on any domestic or international flight whatsoever, the days leading up to the flight and the chaos that likely ensued as described below contributed to his decisions and his actions on Flight 120. The government’s sentencing position pleading (ECF No. 25) referencing a Scandinavian Flight in 2018 where no criminal charges were filed is unsubstantiated and should not be considered in this case. The reality is that in this case, the government and defense counsel are asking this Court for the same criminal sanctions.

By way of background, Mr. Selby has had an interesting and crime-free life.² To understand the stress of soaring to overnight international success, it is important to take into consideration the facts described in this position paper. From *nothing*, Mr. Selby at a young age became *something* through hard work, determination, and self-motivation to become a music star, which is nothing short of near impossibility. His grandfather was a New York blues musician, and Mr. Selby learned from him and began singing in a school and church choir at a young age. At the young age of 14, he began his music career, dedicated himself, and in 2015 began working under his stage name *Desiigner*. Mr. Selby's music career exploded when he signed a record deal with GOOD Music—the famous rapper Kanye West's label. His work ethic and dedication to his music paid off. In 2016 and 2017, he was nominated for many music awards, including a Grammy, mostly attributed to his hit song “Panda,” which became a *Billboard Number 1 Hit* in 2016.³

A sample of Mr. Selby's professional nominations include the following:⁴

- 2017 Grammy Award Nominee for Best Rap Performance, “Panda”
- 2017 Billboard Music Award Nominee for Top New Artist
- 2017 Billboard Music Award Nominee for Top Streaming Songs Artist
- 2017 Billboard Music Award Nominee for Top Rap Artist
- 2017 iHeartRadio Music Award Nominee for Hip-Hop Song of the Year, “Panda”
- 2017 iHeartRadio Music Award Nominee for Hip-Hop Artist of the Year
- 2017 iHeartRadio Music Award Nominee for Best New Hip-Hop Artist
- 2016 MTV Video Music Award Nominee for Best New Artist
- 2016 MTV Video Music Award Nominee for Best Hip-Hop Video, “Panda”
- 2016 American Music Award Nominee for Video of the Year, “Panda”
- 2016 American Music Award Nominee for Favorite Rap/Hip-Hop Song, “Panda”

² The June 9, 2023 pretrial services report identifies only one arrest when charges were later dismissed.

³ Billboard, *Desiigner*, <https://www.billboard.com/artist/desiigner/> (last visited Sept. 6, 2023).

⁴ IMDb, *Desiigner: Awards*, <https://www.imdb.com/name/nm8137369/awards/> (last visited Sept. 6, 2023).

Of those nominations, he won three awards for the hit song “Panda,”⁵ which, in part, rewarded his hard work allowing his music career to take off globally. Impressively, Mr. Selby has performed all over the world, including the United States, Thailand, Tokyo, Russia, Poland, Hungary, Serbia, Germany, England, France, Switzerland, Sweden, and the Bahamas.⁶ His performances have included various festivals with well-known artists, such as Cardi B, Greta Van Fleet, and The Cure.⁷

In the days leading up to the offense, Mr. Selby had been performing overseas on an exhausting music tour. On April 12, 2023 in Thailand, being dehydrated and exhausted, he had a manic episode, which was likely due the stress of the tour and some unknown laced marijuana he smoked the night before. During the manic episode, he asked his team to be taken to the hospital. His staff took him to the emergency room of a hospital in Thailand, and he was admitted and given intravenous fluids and three other medications. The doctor believed Mr. Selby was suffering from, amongst other things, marijuana intoxication and dehydration. Though exhausted, he recovered enough to be able to perform at a concert the next day.

Afterwards, Mr. Selby and his tour crew flew to Tokyo for another performance. At a restaurant in Tokyo, Mr. Selby suffered a similar but milder manic episode, yet he managed to perform that night in Tokyo due to the already booked concert.

⁵ Wikipedia, *Desiigner*, <https://en.wikipedia.org/wiki/Desiigner> (last visited Sept. 6, 2023).

⁶ Concert Archives, *Desiigner Concert History*, <https://www.concertarchives.org/bands/desiigner> (last visited Sept. 6, 2023).

⁷ Id.

Mr. Selby was flying home to California on April 17, 2023 when the unfortunate incident in this case took place. What happened on the airplane is not reflective of who Mr. Selby is nor does it mirror his clean criminal history and complete lack of manic episodes. Indeed, it is important to note that what happened here is a one-time isolated incident—it has not occurred before or since. He has never engaged in such behavior, and he has no criminal history of such behavior.

Not meaning to, in any way, discount Mr. Selby's acceptance of responsibility, it is certainly mitigating to this case that his dehydration, exhaustion from the music tour and travel, the marijuana he had ingested, and the medication he received and consumed from the Thailand hospital, all in combination, contributed in some way to the poor decisions Mr. Selby made on that airplane. The undersigned offers these facts not to negate his guilt but to put it into context. If this were some repeated set of circumstances, then the Court would certainly have good concerns that some recurring mental health issue was at play here, but that is not the case with this isolated incident.

Despite his legal right to do so, Mr. Selby does not assert an intoxication or mental illness defense to this case, but he offers this information so the Court understands and can appreciate the events leading up to what happened on the airplane. Again, it is not an excuse, but it is certainly mitigating. His remorse was instant. After the offense, Mr. Selby released the following statement to the nationally televised entertainment TV show TMZ:

For the past few months i have not been ok, and i have been struggling to come to terms with what is going on. While overseas for a concert i performed at, i had to be admitted in to a hospital, i was not thinking clearly.

They gave me meds, and i had to hop on a plane home. I am ashamed of my actions that happened on that plane. I landed back to the states, and am admitting my self in a facility to help me. I will be cancelling all shows and any obligations until further notice. Mental health is real guys, please pray for me. If your not feeling like yourself please get help.⁸

On June 12, 2023, Mr. Selby appeared by video conference for his Initial Appearance (ECF No. 10). The Court set a number of release conditions, including that he obtain permission from his supervising officer before traveling domestically and obtain Court permission before traveling internationally, that he have no excessive use of alcohol, that he have no use or unlawful possession of a narcotic drug or other controlled substances with drug testing as required by pretrial services, and that he continue therapy or counseling (ECF No. 13). On August 9, 2023, a violation report⁹ was filed alleging that Mr. Selby admitted to marijuana use, admitted that he had not attended counseling, failed to report for drug testing on two occasions, had not provided his PO Box address to probation, had not signed his agreement regarding payment for drug testing, and had not provided verification of participation in counseling (ECF No. 22).

Despite having a rocky start to his pretrial release, Mr. Selby has been actively getting the help he needs. The government's allegations as to Mr. Selby's refusal to seek help is simply not true. As the Court can see from the chart below and in the attached therapy letter, Mr. Selby has attended 19 counseling/therapy sessions, and he has submitted to drug testing even without the request of pretrial services.

⁸ TMZ, *Designer Charged with Indecent Exposure on Plane...*, Apr. 24, 2023, <https://www.tmz.com/2023/04/24/rapper-designer-charged-expose-himself-masturbate-airplane/> (last visited Sept. 6, 2023).

⁹ The report includes that Mr. Selby was to have *no* alcohol use, but the conditions of release only require *no excessive* alcohol use (ECF Nos. 13, 22).

Sidney Selby
Therapy Log

Date	Fee	Agency	#NAME?	Description/+D3+E1
6/9/23	N/C		Ari	Assessment
6/14/23	N/C		Santos/Eddie	Initial
6/16/23	N/C		Eddie	
6/19/23	N/C		Santos	
6/20/23	N/C		Eddie	
6/30/23	N/C		Santos/Eddie	
7/3/23	N/C		Santos	
7/5/23	N/C		Santos	
7/7/23	N/C		Eddie	
7/14/23	N/C		Santos/Eddie	
7/17/23	N/C		Santos	
8/11/23	N/C		Eddie	
8/14/23	N/C		Santos	
8/15/23	N/C		Santos	
8/16/23	N/C		Santos	
8/24/23	N/C		Santos	
8/25/23	N/C		Santos	

Sidney Selby
Drug Testing Log

Date	Time	Agency	Address	Test Result
8/16/23	1:00am pst	ProActive Work	16360 Roscoe Blvd Suite 120, Van Nuys, CA 91406	Negative
8/29/23	10:04am pst	ProActive Work	9421 Winnetka Ave Chattsworth, CA	Negative

ARGUMENT

Mr. Selby will plead guilty to a Class B Misdemeanor with a maximum of 90 days in jail. The parties agree to jointly recommend that the Court sentence Mr. Selby to two

years of probation, 120 hours of community service (due within the first year of probation), a \$5,000 fine, and a statement of apology to the flight attendants.

If the Court adopts these sentencing recommendations, defense counsel anticipates the conditions of probation may be similar to Mr. Selby's pretrial release conditions. Regarding those conditions, Mr. Selby asks for two modifications. First, that he have no travel restrictions while on probation due to the necessity of domestic and international travel for his thriving music career, and second, that drug testing be on probable cause rather than a color wheel or other random testing. Mr. Selby's New York attorney and his agents and managers have proffered to the undersigned that he already has tours booked overseas. This travel is necessary for his career and, if limited, may severely damage it given that the music tours are needed to help promote his music.

There is no doubt that Mr. Selby has already been punished in this case and, in fact, much more than a non-celebrity would suffer given the same facts on the plane. Given his music career, Mr. Selby is a very public figure. This Minnesota prosecution has been covered all over the news, including entertainment shows such as TMZ, etc.¹⁰ Both the offense allegations and the pretrial release violation allegations have been public and have damaged his reputation and career. Booking agents have cancelled concerts due to the allegations, which have significantly affected his revenue and, more importantly, his reputation—the most important and critical thing he can possess.

¹⁰ Google, <https://www.google.com/> (search for “Desiigner plane”) (last visited Sept. 6, 2023).

Regarding the request that his travel not be restricted, Mr. Selby is planning tours all over the world in 2023/2024, including planned concerts/tours to Dubai, Kazakhstan, and more. Mr. Selby's income is based on his performances and tours. He has no opposition to notifying his probation officer about his travels, but he seeks assurance from the Court that he will be able to travel and perform without hinderance from probation. Mr. Selby has not fled despite having traveled internationally since the first court appearance nor has he been charged with a new crime or proven himself to be a danger to the community. His actions on the plane in this case in no way reflect his history of flying all over the world in a lawful and respectful manner. What happened on the plane was the result of a manic episode, exhaustion, dehydration, and very likely chemicals and medications that he was given at the hospital in Thailand.¹¹ He is embarrassed about his actions and plans on taking full responsibility. Thus, imposing no travel restrictions is appropriate in this specific and very unique case.

Regarding the request that drug testing be on probable cause rather than a color wheel or other such random testing, Mr. Selby has clearly struggled with remaining compliant with drug testing while on pretrial release. Notably, Mr. Selby has been required to call in between 7:00 pm and 4:00 am daily to find out if he has to test. If he does, he must report for testing between 5:00 am and 9:00 am. While Mr. Selby has

¹¹ The discovery in this case contains photographs taken by the FBI of the medications Mr. Selby was given at the hospital. Mr. Selby had never before taken these medications and thus had no way of knowing their side effects.

missed some drug tests through pretrial services, he has also taken two private drug tests, both with negative results (see the above chart and attached result).

Mr. Selby has also been attending therapy since June 9, 2023, and he has had 19 sessions so far (see the above chart and attached letter).¹²

Finally, enclosed are two support letters, one from Mr. Selby's management team, RIVETING Entertainment, as well as his New York entertainment attorney. His management team writes:

We wanted to bring to your attention that Sidney has been dedicated to improving his mental and physical health, and we are pleased to report that he is doing much better than before. His commitment to his well-being is commendable, and it is clear that he is taking the necessary steps to prioritize his personal growth.

...
Furthermore, Sidney has been pouring his heart and soul into new uplifting music, aiming to inspire his fans. We believe in his talent and vision, and we are confident that his music will have a positive impact on those who listen to it.

His entertainment attorney writes:

Unfortunately, becoming incredibly famous and successful at such a young age (he was 19 years old when "Panda", his first single, became a massive global record) sometimes can be a lot to handle, especially from a mental health perspective.

However, I am proud that Sidney has taken responsibility and has taken (and will continue to take) the steps necessary to become the best version of himself!

¹² Enclosed is a letter from his provider's office.

CONCLUSION

For the foregoing reasons, Mr. Selby respectfully requests that this Court adopt the recommendations of the parties, impose no executed jail time, not impose any travel restrictions during probation, and impose drug testing on probable cause rather than random testing.

Respectfully submitted,

RYAN GARRY, ATTORNEY, LLC

Dated: September 6, 2023

s/ Ryan Garry

Ryan P. Garry (Attorney No. 0336129)
Attorneys for Defendant
333 South Seventh Street, Suite 3020
Minneapolis, MN 55402
Phone: (612) 436-3051
Fax: (612) 436-3052
ryan@ryangarry.com